

1 SHARON PETROSINO
2 Public Defender
3 Orange County
4 SARA ROSS
5 Assistant Public Defender
6 Supervising Attorney
State Bar No. 234587
14 Civic Center
Santa Ana, CA 92701
Telephone: (714) 834-2144
Fax: (714) 834-2729

Dept.: C35
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
NOV 09 2018
DAVID H. YAMASAKI, Clerk of the Court
BY: *R. Peace*
R. PEACE, DEPUTY

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

10 PEOPLE OF THE STATE OF CALIFORNIA,

11 *Plaintiff,*

12 vs.

13 JOHN DOES 1-58,

14 *Defendant.*

Case No.: M-17638

REQUEST FOR REQUEST FOR
EVIDENTIARY HEARING WITH
TESTIMONY; POINTS AND
AUTHORITIES

16 **MOTION**

17 The Orange County Public Defender's Office hereby requests this court order an
18 evidentiary hearing with live testimony to determine the full scope of the unauthorized
19 recordings.

20 This request is based upon the attached Points and Authorities, argument of counsel.
21 and any evidence introduced at the hearing.

23 **POINTS AUTHORITIES AND ARGUMENTS**

24 **Introduction**

25 This Court previously requested that counsel consider which global sanctions or
26 remedial measures might be appropriate given the new information continually coming to light
27 about the recorded phone calls at Orange County Jail. Before addressing such sanctions,
28

1 counsel requests this court conduct an evidentiary hearing to permit counsel to fully flesh out
2 exactly how many calls were recorded and how many were accessed by law enforcement and
3 the prosecution team.

4
5 **I. THIS COURT SHOULD ORDER AN EVIDENTIARY HEARING TO**
6 **HAVE GTEL EXPLAIN THE CONFLICTING AND UNRELIABLE**
7 **INFORMATION IT HAS THUS FAR PROVIDED**

8 Over the course of this litigation, it has become apparent that GTEL has repeatedly
9 provided inaccurate information as to how many phone calls have been recorded and how
10 many calls have been accessed by law enforcement and shared with the prosecution team.
11 With each witness testimony, each court appearance, and each filing, GTEL has provided
12 conflicting and at times, dubious, information with respect to how many phone calls were
13 recorded, why they were recorded, and which calls were accessed and by whom.

14 To this day, GTEL continues to provide conflicting and unreliable information about
15 how many calls were recorded, why they were recorded, who accessed the recorded calls, and
16 how all of this occurred. The following is an abbreviated timeline of some of GTEL's
17 conflicting answers on these topics:

- 18 • **June 22, 2018**: GTEL Tech Custodian of Records Marcelino Castillo swore under
19 oath that calls on the "private" list are never recorded. (Declaration of Castillo
20 attached herein as Exhibit A.)
- 21 • **July 27, 2018**: GTEL provided a letter from newly promoted Executive Vice President
22 of Operations, Darren Wallace. (Gtel letter dated July 27, 2018, attached herein as
23 Exhibit B.) GTEL claimed in its letter that, when it transitioned systems, a "technical
24 error" occurred. That "technical error" resulted in the inadvertent recording of 1,079
25 attorney client phone calls. GTEL claimed that these were only calls on the "Do Not
26 Record" list and that the numbers on the separate "Private" list were properly uploaded.
27 GTEL claimed that only 58 calls of those 1,079 calls were accessed by the Sheriff's or
28 GTEL technicians.
- **August 23, 2018**: George McNitt, developer from GTEL, testified in *People v.*
Waring (17WF2266). McNitt testified that the failure to upload the "Do Not Record"
list of attorney phone numbers was a "human error" and not a "technical glitch."
McNitt and another GTEL developer, Matthew McFalls, both testified that the lists
of 1,079 and 58 calls were accurate. These GTEL employees testified that the fact
that only 7 calls were located in GTEL's records to the Public Defender's Office

1 main number (714) 834-2144 meant that inmates at Orange County Jail only called
2 the Public Defender's Office 7 times in the three and a half year period covered by
3 the records.

- 4 • **September 25, 2018:** During an informal, off the record discussion in the Waring
5 case, GTEL employee McNitt revealed that the GTEL recordings database actually
6 held an additional 549 recordings of calls made to attorney Joel Garson, beyond the
7 initial 1,079 calls GTEL claimed. GTEL could not explain the discrepancy or why
8 additional numbers beyond the 1,079 calls were recorded. Of these additional 549
9 calls to Mr. Garson, GTEL revealed that a significant number of them had been
10 accessed by law enforcement and were not included on the list of 58 accessed calls.
- 11 • **October 3, 2018:** County Counsel sent a letter to GTEL requesting updated
12 information as to why Mr. Garson's recorded phone calls did not show up on the list
13 of 1,079 recorded calls or list of 58 accessed calls. (Attached herein as Exhibit C.)
- 14 • **October 25, 2018:** GTEL submits a letter to the court, which is placed under seal.
- 15 • **November 6, 2018:** GTEL employee McNitt testified again in *Waring*. He cannot
16 explain why there are 7 recorded phone calls in July 2016 to the Orange County
17 Public Defender's main number (714) 834-2144 when this number was on the so-
18 called "private" list. McNitt cannot explain why there are 4 recorded phone calls in
19 this same time period to the Alternate Public Defender's Office (714) 568-4160
20 when that number was also on the so-called "private" list.
- 21 • **November 9, 2018:** In Department C35, this is the first time we learn of the so-called
22 actual numbers that have been recorded:
 - 23 ○ 29,456 incomplete calls (i.e. call placed but not connected to anyone)
 - 24 ○ 4,356 completed calls (i.e. call placed and connected)
 - 25 ○ 347 accessed times (the number of times an unknown amount of calls were
26 accessed)

18 II. GIVEN THE CONFLICTING INFORMATION WE HAVE FROM 19 GTEL AND OCSD, THE SCOPE OF THE HEARING WOULD 20 ENCOMPASS THE FOLLOWING INFORMATION

21 This is not an exhaustive list of issues that counsel needs to explore at this hearing.

- 22 • The specific details as to how GTEL a) collects information related to the recorded
23 phone call lists and b) created the spreadsheets
- 24 • Whether GTEL and OCSD can conduct live monitoring of the phone calls, as well
25 as the manner in which live monitoring is recorded and/or documented
- 26 • An answer from GTEL as to how a so-called "private" number could be recorded,
27 given its repeated insistence that no "private" numbers could be recorded
- 28 • An answer from GTEL explaining how and why they keep providing conflicting
information as to the recorded numbers, the list of 1,079, the list of 58, etc., etc., etc.

- 1 • An answer from GTEL as to why there are only 7 of these recorded “private” calls
2 to the Public Defender’s Office main number (and 4 to the Alternate Public
3 Defender’s Office main number) in the entire 3+ year period
- 4 • An answer from GTEL and/or OCSD as to whether either GTEL or the OCSD is
5 able to turn the “private” number on and off
- 6 • An answer from OCDA as to their level of knowledge of the attorney client phone
7 call recordings and any communication with GTEL and/or OCSD and/or County
8 Counsel
- 9 • An answer from OCSD as to whether they have been trained on how to turn a
10 “private” number on and off
- 11 • An answer from OCSD as to how they have been trained to access the phone call
12 portal on their work/personal cell phones
- 13 • An answer from OCSD as to how they have utilized DATA IQ, the system that
14 permits OCSD to search for “key words” in recorded phone calls and how they utilize
15 DATA IQ as it relates to attorney client phone calls
- 16 • Given County Counsel’s repeated concerns regarding the so-called “warning” on
17 recorded calls:
 - 18 ○ An answer from OCSD as to how they have been trained if they hearing a
19 recorded warning on an attorney call (i.e. were they trained they could now
20 listen to those calls if there was a warning)
 - 21 ○ An answer from GTEL and OCSD as to which warnings are played when
22 and how many different versions of warnings there are
- 23 • An answer from OCSD as to their level of awareness of their capability of recording
24 attorney-client phone calls and whether OCSD was put on notice of this fact by
25 GTEL

1 CONCLUSION

2 Public defender clients are in dire need of information concerning these recorded phone
3 calls. The lack of information thus far is negatively impacting the ability of the Public
4 Defender's Office to litigate on behalf of their clients. Given the conflicting information from
5 GTEL with regard to these calls, this Court should conduct an evidentiary hearing to permit
6 further examination into GTEL's claims regarding the recorded and accessed phone calls.

7
8 DATED: November 9, 2018

Respectfully submitted,
SHARON L. PETROSINO
Public Defender
Orange County

9
10
11 

12 SARA ROSS
13 Assistant Public Defender
14 Supervising Attorney
15 Writs & Appeals Unit
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1 **GREENBERG TRAURIG, LLP**
2 **DANIELL K. NEWMAN (SBN 242834)**
3 **1840 Century Park East, Suite 1900**
4 **Los Angeles, CA 90067**
5 **Telephone: (310) 586-7700**
6 **Facsimile: (310) 586-7800**
7 **E-Mail: newmandk@gtlaw.com**

8 **Attorneys for Non-Party**
9 **Global Tel*Link Corporation**

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**

12 **PEOPLE OF THE STATE OF**
13 **CALIFORNIA**

14 **v.**

15 **JOSHUA WARING**

16 **CASE NO. 17WF2266**

17 **DECLARATION OF CUSTODIAN OF**
18 **RECORDS OF NON-PARTY GLOBAL**
19 **TEL*LINK CORPORATION**

20
21
22
23
24
25
26
27
28

DECLARATION OF CUSTODIAN OF RECORDS OF GLOBAL TEL*LINK CORPORATION

1 I, Marcelino Castillo, declare as follows:

2 1. I and have been designated by my employer Global Tel*Link Corporation ("GTL") to
3 serve as the company's Custodian of Records for purposes of responding to the Subpoena Duces Tecum
4 (the "Subpoena") served on GTL by Defendant Joshua Waring.

5 2. Unless stated on information and belief, I have personal knowledge of the facts in this
6 declaration and know them to be true and correct. If called as a witness in this matter, I could and
7 would testify competently thereto under oath. In fact, I have already appeared and testified in
8 response to the Subpoena, as has my colleague Jennifer Rodriguez.

9 3. I am a Field Service Manager with GTL and I have worked for GTL for 12 years.

10 4. GTL is the official provider of inmate telephone services for the Orange County Jail
11 System as operated under the direction of the Orange County Sheriffs' Department.

12 5. Defendant's Subpoena to GTL demanded "[a] printout of all telephonic calls made
13 through the GTL for Orange County Jail inmate #2944821," the Defendant in this action. Those records
14 were produced to Defendant in their entirety on May 8, 2018.

15 6. The Subpoena also demanded "[a] list of all Costa Mesa police officers who HAVE or
16 HAD access to "live" monitoring or downloading capabilities of telephone calls made through GTL at
17 the Orange County Jail."

18 7. GTL confirms that there has never been any live monitoring by anyone of any phone
19 calls made using Defendant's GTL account.

20 8. GTL also confirms that no one at the Costa Mesa Police Department or at any other law
21 enforcement agency outside of the Orange County Sherriff's Department has or has ever had access to
22 live monitoring or downloading capabilities of any phone calls made through GTL's system. This is
23 true for Defendant's account and for every other inmate account in Orange County. No one outside of
24 the Orange County Sherriff's Department or GTL is given access to the system.

25 9. If an officer with any other law enforcement agency seeks records of any recorded phone
26 calls on the GTL system in Orange County, that officer must serve the Orange County Sherriff's
27 Department with a subpoena for such records.
28

10. On information and belief, Joel Garson, who has represented that he is assisting the Defendant in this action, has communicated to counsel for GTL that there is additional information he seeks beyond that specifically specified in the Subpoena. Specifically, Mr. Garson has inquired about the monitoring or recording of any attorney calls.

11. In Orange County, inmates of the Orange County Jail or their counsel can request that the phone numbers of their legal counsel be designated "private." This information is provided to inmates when they create a GTL account to make phone calls from the Jail. Such requests to designate a number "private" are directed to the Orange County Sheriff's Department which will verify that the phone number requested to be so designated belongs to an attorney. The Sheriff's Department then directs GTL to designate all calls to or from that phone number "private." Any phone calls to or from a phone number that has been designated "private" are not recorded and the system also blocks any monitoring capability.

12. All non-private phone calls made on the GTL system are recorded. There is an audio message that plays at the beginning of every such calls that advises all parties on the call that the call is being recorded. Another message will play at regular intervals during a call to remind the parties to the call that the phone call is being recorded. These messages do not play at the outset or during calls that are designated "Private" because those calls are never recorded.

13. GTL also conducted a search of Defendant's account records for the two phone numbers it has been provided that are reportedly associated with Mr. Garson, (714) 258-7200 and (714) 614-3987. GTL confirms that there are no recorded calls, and have never been any recorded calls, to or from either of those numbers on Defendant's account.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on the 22nd day of June, 2018 at Glendale, California.

~~MARCELINO CASTILLO~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT B



Global Tel*Link Corporation Corporate Headquarters Operations Center
10071 10071 10071
Suite 100 Suite 100 Suite 100
Costa Mesa, CA 92626 Costa Mesa, CA 92626 Costa Mesa, CA 92626

July 27, 2018

Via Email and Overnight Delivery

Orange County Sheriff's Department
Attention: Sheriff Sandra Hutchens
550 N. Flower Street
Santa Ana, CA 92703

Dear Sheriff Hutchens,

This letter summarizes our recent discussion in which Global Tel*Link Corporation (GTL) advised the Orange County Sheriff's Department that GTL had recently discovered that, during the transition from the Lazerphone to ICMv platforms in January of 2015, a technical error occurred. This technical error resulted in the inadvertent recording of 1,079 inmate telephone calls made over an approximate three-year period to phone numbers that were designated by the County as "do not record." Parties to those 1,079 calls heard a prompt during each of the calls advising that the call was "subject to monitoring and recording." After conducting research, we have determined that the Sheriff's Department staff, and in certain circumstances GTL, for investigative or technical purposes, accessed 58 of those 1,079 recorded calls a total of 87 times.

Upon determining that this error had occurred, GTL immediately took the following corrective action: First, GTL blocked access to these recordings and second, GTL reloaded the list of telephone numbers provided by the County and identified by the County as not to be recorded into the ICMv phone system database so that they are again marked "do not record". As of July 6, 2018, the system platform has been updated so that all phone numbers contained on this list are marked appropriately and will not be recorded. We have preserved the previously-made recordings and will maintain them without providing further access to anyone, should the recordings be needed in furtherance of the County's review of this incident.

GTL is committed to working productively and proactively with the Orange County Sheriff's Department to resolve any issues resulting from these inadvertent recordings, as well as defining a process to ensure that numbers marked as "do not record" are validated and uploaded accordingly. We have reviewed all the telephone numbers whose calls should not be recorded, confirmed the reload of the numbers in our database, and tested the database to ensure that it is functioning properly. As you know, we have previously provided training on the system to the Orange County Sheriff's Department and will continue to provide any refresher training if needed. We also have enhanced our quality assurance program and will conduct additional internal training sessions designed to minimize the possibility of future errors. GTL remains committed to implementing any appropriate changes to our systems, to identify and prevent other problems.



Global Tel*Link Corporation
New York, NY

Corporate Headquarters
100 West 100th St.
New York, NY 10025

Operations Center
100 West 100th St.
New York, NY 10025

GTL values its relationship with Orange County and appreciates your efforts to assist in correcting this issue. Should you have any questions, or need additional information, please do not hesitate to contact me.

Thank you.

A handwritten signature in black ink that reads "Darren Wallace".

Darren Wallace
Executive Vice President, Operations

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT C



THE COUNTY COUNSEL
COUNTY OF ORANGE

333 W. SANTA ANA BLVD., SUITE 407
SANTA ANA, CA 92701
MAILING ADDRESS: P.O. BOX 1379
SANTA ANA, CA 92702-1379
(714) 834-3300
FAX: (714) 834-2339

Wendy J. Phillips
Senior Deputy
County Counsel
(714) 834-6298

S-400

October 3, 2018

VIA FACSIMILE (310) 586-0582 AND U.S. MAIL

LEON I. PAGE
COUNTY COUNSEL
JAMES C. HARMAN
CHIEF ASSISTANT
JACK W. GOLDEN
MARIANNE VAN RIPER
SENIOR ASSISTANTS
KAREN L. CHRISTENSEN
ANGELICA CASTILLO DAPTARY
ROBERT N. ERVAIS
LAURA D. KNAPP
TERRI L. MARGOUDIAN
MARK D. SERVINO
NICOLE A. SIMS
DANA J. STITS
NICOLE M. WALSH
SUPERVISING DEPUTIES
JASON C. BROWN
DIRECTOR OF ADMINISTRATION

JANELL R. PECK
LACRIS A. SHADR
DANIEL M. SHEPARD
STEVEN C. WELLES
CAROLYN L. PROFF
KEITH G. DAPTARY
JAMES H. DU
WENDY J. PHILLIPS
MICHAEL A. HANBERT
BRAD R. ROSEN
SANDY RIVIER
ANDREW TORRES
OSCAR TORRES
JACQUELINE GOODMAN
ANDREA COLLIER
PAUL M. ALABASHIAN
D. ERYN BERN
LORI A. TORRES
MASSOUD SHARAF
SHARON VICTORIA DUFFIN
BERNICE S. LEBAN
BLAZENETH A. FERRAI
LARIEN C. EDWARDS
GABRIEL I. BOYER
JALIA C. WOO
MARK A. WATKINS
ADAM C. CLAYTON
KRISTEN K. LUCIANO
ERIC A. DUNN
JAMES D. P. STERNMANN
VANESSA D. ATKINS
SUZANNE H. SHAW
CONORAN J. MORRIS
MATTHEW J. SPRESSLER
KAYLA K. WATSON
CAROLYN M. KROGHAN
ASHLEY L. LOO
RONALD T. MACBRAYLEY
JOHN P. CLAYTON
SAMARA BRIGGS
CHRISTOPHER S. ANDERSON
JUSTIN A. GRAMAK
BRITTANY MARAK
JEFFREY A. STOKK
MARK N. SANCHEZ
OLIVIA J. ZANDER
CYNTHIA G. BIDA
STEPHAN L. WATSON
RAY DAZZ
JESSICA PAULSON-DUFFY
BENJAMIN L. BERHARD
JON MICHAEL R. BRADLEY
PATRICK K. BEUDO
KEO K. TANAKA
DEAN CHONG
ANN LEE
MARTY RITCHIE
DEPUTIES

Adil M. Khan, Esq.
Michael Sklaire, Esq.
Daniell Newman, Esq.
GREENBERG TRAUIG, LLP
1840 Century Park East, Suite 1900
Los Angeles, CA 90067-2121

Re: *Global Tel*Link Contract Inmate Telephone Services Contract with County of Orange, MA 060-15010542*

Dear Counsel:

We write to express our frustration concerning the piecemeal and incomplete information provided by Global Tel*Link (GTL) to date in relation to the above-referenced contract. As we explain below, based on facts that have recently come to light, GTL has apparently failed to take immediate actions as previously requested by OCSD in relation to the discovery of recordings between attorneys and inmates in the Orange County jails. Surely you are aware that, in 2015, GTL failed to transfer the phone numbers of over 1,000 attorneys that existed in the predecessor system – Lazerphone – to the new inmate telephone system. GTL's failure to transfer these phone numbers from the old system to the new system led to the improper recording of well over 1,000 potentially privileged phone calls between Orange County jail inmates and their attorneys.

Herein we ask that you respond to a series of questions in regards to what GTL has done since the failure to transfer the numbers to the new system was discovered in June. We also make demands in regard to additional steps we ask that GTL take to provide assurances to OCSD and the County that all improperly recorded calls between attorneys and their inmate clients have been identified. The OCSD not only needs accurate and complete information to effectively manage the jail but also demands that the Superior Court in both the Special Master proceedings in *People v. Does 1-58* and in *People v. Waring* similarly be informed.

As you are probably aware, on September 25, 2018, the Superior Court scheduled a hearing in the case of *People v. Waring*. An off-the-record meeting occurred at the courthouse that included GTL employee, George McNitt, and many others. During this meeting, Mr. McNitt revealed that the GTL recordings database contains 549 recordings of calls apparently made to Joel Garson, a criminal defense attorney in the County of Orange. These 549 recordings are in addition to the almost 1,100 recordings of calls, presumably to

Adil M. Khan, Esq.
Michael Sklaire, Esq.
Daniell Newman, Esq.
GREENBERG TRAURIG, LLP
October 3, 2018
Page 2

attorneys' phone numbers, that Executive Vice President Darren Wallace noted in his correspondence of July 27, 2018. Mr. McNitt also revealed that the almost 1,100 recordings originally found to exist, as reported in July 2018, were discovered by searching the current recordings database against a "2015 list" taken from the Lazerphone system, the predecessor platform to ICMv, the current platform.

You will also recall that when this issue was discovered in June, OCSD had learned that GTL only had a list of 72 phone numbers on its "private" list for OCSD's system.¹ OCSD staff worked with Russ Williams, OCSD's assigned GTL field service manager, to upload to the list of 72 phone numbers approximately 1,300 phone numbers that OCSD had record of being on a "do not record list" under the Lazerphone system that were/are attorneys' telephone numbers. (See attached e-mail strings on the subject.) After OCSD requested that the 1,300 numbers be added to the private list, OCSD asked whether there were any record of recordings to the then updated private list. In pursuit of this information, Mr. Williams sent the following e-mail (excerpted from the e-mail string referenced above and attached hereto):

From: Russ Williams
Sent: Friday, July 06, 2018 3:58 AM
To: Support <support@gtl.net>
Cc: Wayne Morris <wayne.morris@gtl.net>; O'Charcon, Diane <DOCharcon@ocsd.org>; Matthew McFalls <Matthew.McFalls@gtl.net>; Justin Tidwell <Justin.Tidwell@gtl.net>; Ken McNiel <Ken.McNiel@gtl.net>; O'Neil, BUFFY M <BOneil@ocsd.org>
Subject: 1,300 number list

Team

The Sheriff at Orange County CA is requesting to know if any calls exist to each and any of the "privileged/Private" numbers for Orange County CA. (approx. 1382) This would be from Jan 2015 to present. (the list attached is only 1300 of the numbers)

Please open a ticket to confirm there "are no recordings available" for any of the numbers on the list.

¹ The current contract defines a phone number that is categorized as "private" as a number that "will not be recorded nor subject to monitoring." Since the discovery of the issue relating to the phone calls in June, OCSD has learned that there is both a "private" list and a "do not record" list. This letter is intended to address any phone number of an attorney that was in put into the GTL database categorized as "private" or "do not record."

Adil M. Khan, Esq.
Michael Sklaire, Esq.
Daniell Newman, Esq.
GREENBERG TRAURIG, LLP
October 3, 2018
Page 3

This info is needed asap so we will need an ETA if possible for gathering the info?

Thanks Team

R.D. "Russ" Williams CTM
Field Service Manager - Field Service Team



After the above e-mail, Mr. Williams forwarded to OCSD a list referencing 1,064 recordings to phone numbers, which Mr. Williams described as: "... the numbers called from the 1300 list." Based on the e-mail exchange with Mr. Williams, OCSD believed that the information regarding the number of recordings that exist in GTL's database was derived from cross-referencing the entirety of the OCSD's privileged/private numbers, as referenced by Mr. Williams, after the list had been updated with the 1,300 numbers provided by OCSD.

On July 25, 2018, at a meeting at Sheriff's Headquarters with Mr. Wallace, other GTL representatives, Assistant Sheriff Greenberg, Commander Balicki, Greg Boston, and other OCSD staff, GTL apparently provided a hardcopy list of recorded numbers that showed 1,079 recordings. GTL also provided a list referencing 58 recordings of phone calls that were accessed in some manner by GTL and/or Sheriff's staff. (See Mr. Wallace's letter of July 27, 2018.) It is unclear whether GTL provided an explanation for the difference in the number of recordings that was provided by Mr. Williams on July 11 and the number of recordings on the list provided at the July 25 meeting. In an abundance of caution, though, OCSD submitted both lists to the Court in *People v. Waring* in response to the Court's order to turn over all lists of recordings. OCSD continued to believe that both lists were derived from the newly-updated "privileged/private" phone numbers for Orange County.

This brings us to September 25, when the department's good faith belief was controverted by the new information provided by Mr. McNitt. Obviously, if GTL had derived the list of recordings based on the updated list of "privileged/private" phone numbers, which as Mr. Williams indicates in his e-mail total approximately 1,382 numbers, Mr. McNitt should not have found an additional 549 recordings of calls to Mr. Garson. Mr. Garson's two phone numbers were already on the list of 72 phone numbers when this issue was discovered in June. Thus, if the full list of 1,382 had been used to determine the number of recordings on the GTL database to privileged/private numbers, then the recordings of calls to Mr. Garson's number(s) would have necessarily already been found. One possible explanation for this discrepancy is that both the list of 1,064 recordings originally provided

Adil M. Khan, Esq.
Michael Sklaire, Esq.
Daniell Newman, Esq.
GREENBERG TRAURIG, LLP
October 3, 2018
Page 4

by Mr. Williams, and the list of 1,079 recordings provided by GTL at the July 25, 2018 meeting did not include review of the 72 phone numbers that were on the privileged/private list when this issue first arose in June.

Moreover, based on Mr. McNitt's statements on September 25, we suspect that the list that Mr. Williams provided containing 1,064 recordings and the list containing 1,079 recordings may have been created from different data sets. Based on the e-mail exchange with Mr. Williams, the list of 1,064 recordings should have been based upon the then-updated "privileged/private" list of numbers (approximately 1382 numbers). However, Mr. McNitt apparently indicated on September 25 that the list of 1,079 recordings was derived by relying on data drawn from the Lazerphone system as that list existed in 2015. GTL has provided no information about whether the data drawn from the Lazerphone system matches any of the updated privileged/private list of numbers.

Finally, during the September 25 meeting, OCSD learned for the first time that the list of 1,079 recordings only included *completed* calls. However, the list of 58 accessed calls, which was also provided by GTL to OCSD, included both *completed* and *incomplete* calls. This distinction is obviously significant because it explains why a telephone number on the list of 58 is not on the list of 1,079. Again, OCSD was left in the dark and given either incomplete or inaccurate information.

To avoid further compounding any misunderstandings and/or misinformation, we ask that you provide responses in writing to the following questions:

- 1) What was the basis for the list of 1,064 recordings provided by Mr. Williams on July 11, 2015? In other words, from what data was that list derived?
- 2) What was the basis for the list of 1,079 recordings provided by GTL to OCSD command staff at the meeting on July 25, 2018? In other words, from what data was that list derived?
- 3) Presuming that different data sets were used to create the two lists of recordings, why was this done and why was OCSD not made aware of this at an earlier date?

In addition, we make the following demands on GTL in regards to potential recordings that GTL may possess in its databases:

- 1) Run the attached list of 72 numbers, which existed in OCSD's "privileged/private list" as of June 11, against GTL's recordings database to determine what recordings exist to these numbers. We know that there should be at least 549 records, since Mr. Garson's numbers are on this list. Please ensure that the following data fields are on the list of calls to attorneys for which there is a record of a recording:

Adil M. Khan, Esq.
Michael Sklaire, Esq.
Daniell Newman, Esq.
GREENBERG TRAURIG, LLP
October 3, 2018
Page 5

- a. Complete/Incomplete to reflect whether the call was completed or not.
 - b. The date/time the call was made.
 - c. The PIN associated with the call.
 - d. The duration of the call.
 - e. Whether the call was accessed in anyway by GTL and/or OCSD staff. If a recording was accessed, provide the following additional information:
 - i. the identifier of the person accessing the call,
 - ii. the manner in which it was accessed, i.e., recorded, downloaded, or whatever other identifier the GTL system may have to reference the nature of how a recording/call is accessed
 - iii. when it was accessed
- 2) Please provide a copy of the list of recordings to the list of 72 numbers with the above mentioned categories to both the undersigned and to the Special Master in the case of *People v. John Does 1-58*, Case No. M-17638, filed under seal.
- 3) Preserve and sequester any recordings to the list of 72 phone numbers discovered such that no OCSD staff or GTL staff may access the recordings.
- 4) Confirm that the 1,300 numbers provided by OCSD to Mr. Williams on June 20th have been added to OCSD's list of privileged/private numbers in the GTL database such that calls made to those numbers are not recorded by the system. Please provide proof that this action has been taken.
- 5) Provide the undersigned a copy of the "2015 list" of numbers from the Lazerphone system referenced by Mr. McNitt on September 25.
- 6) Cross-reference the list of 1,300 provided by OCSD on June 20th to Mr. Williams, against the "2015 list" from the Lazerphone system referenced by Mr. McNitt. If GTL discovers any number on the 2015 list that is not on the list from OCSD, please do the following:
- a. Provide a list of the number(s) to the undersigned,
 - b. Add the number(s) to the "privileged/private" list for OCSD,
 - c. Run the number(s) against the GTL recordings database to determine if any recordings (both complete and incomplete) exist,
 - d. Preserve and sequester any discovered recordings from access by OCSD and GTL staff, and

Adil M. Khan, Esq.
Michael Sklaire, Esq.
Daniell Newman, Esq.
GREENBERG TRAURIG, LLP
October 3, 2018
Page 6

- e. Determine if any of the recordings were accessed in anyway by GTL or OCSD staff.
 - f. If previously undiscovered recordings are found, provide a list of the phone numbers for which recordings exist to the undersigned and the Special Master in the case of *People v. Does 1-58*, filed under seal. The list should contain the same data fields as referenced above in paragraph 1. a. – e., above.
- 7) Determine which numbers have been added to OCSD's privileged/private list since June 12, excluding the 1,300 plus numbers that were provided by OCSD to Mr. Williams, and run those numbers against the GTL recordings database. If this results in discovery of more recordings, perform the same steps as noted in paragraphs 6) c. – f., above.

In short, OCSD needs to know about any recording of a phone call between an inmate at the OC Jail and his or her attorney. OCSD expects full transparency. If there is any data field that GTL believes that the OCSD should be aware of that is not requested above, please contact the undersigned immediately.

Please feel free to contact the undersigned with any questions or concerns.

Very truly yours,

LEON J. PAGE
COUNTY COUNSEL

By 
Wendy J. Phillips, Senior Deputy

WJP:azs

cc: Sandra Hutchens, Orange County Sheriff
Stuart Greenberg, Chief, Corrections Division, Orange County Sheriff